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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,526	09/29/2003	James Darrin Davis	CN 3764	1191
2128	7590	07/31/2006	EXAMINER	
HAVERSTOCK, GARRETT & ROBERTS LLP			ADAMS, GREGORY W	
611 OLIVE STREET			ART UNIT	
SUITE 1610			PAPER NUMBER	
ST. LOUIS, MO 63101			3652	

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/672,526

Applicant(s)

DAVIS, JAMES DARRIN

Examiner

Gregory W. Adams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 19, 2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

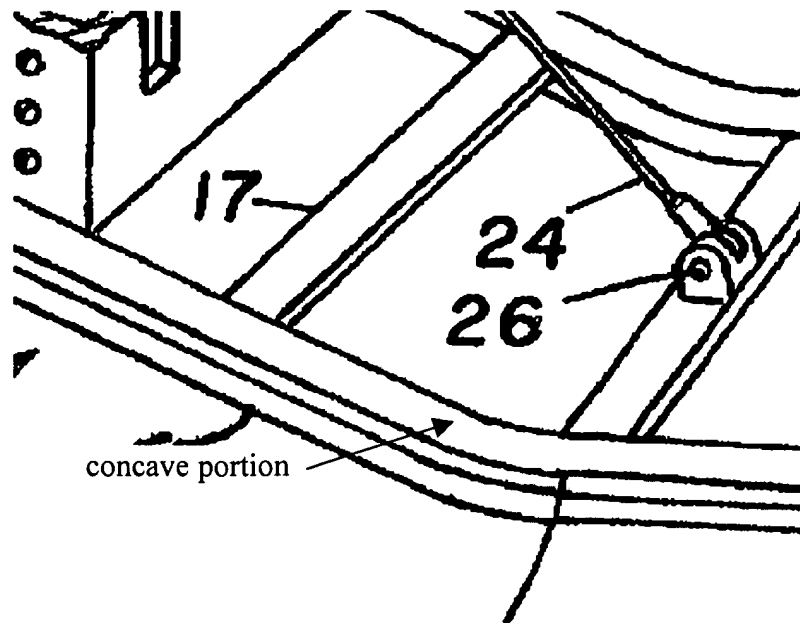
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 4, 9 & 14 are rejected under 35 U.S.C. 102(a) as being anticipated by Smith et al. (US 2002/0168257) (previously cited).

Smith discloses a deer-carrier rack for attachment to an all terrain vehicle comprising an attaching frame 12, deer support frame having elongate dog legs 15, 16, a concave region located at an axel end (FIG. 2 shown below) wherein a concave region faces upwardly in a deployed position and is upright when said dog legs are upright.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ellis (US 2,930,500).

With respect to claims 4, 9 & 14, Ellis discloses a rack comprising an attaching frame 16, and a deer support frame 18, 22 having an axel end 38 that includes a concave region 46 adjacent an attaching frame lower end 40, the concave region 46 oriented to face upwardly when in an upright orientation and rotatably positioned relative to said attaching frame 16 and configured for receiving a deer, e.g. has concavity.

Although Ellis does not explicitly disclose carrying deer Ellis' support frame 18 including

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a concave region facilitates loading of heavy equipment from ground level to a vehicle-attached hauling position that are otherwise be too heavy for unassisted lifting. C1/L15-60. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Ellis' support frame to accommodate deer as it is designed for human-assisted loading of heavy objects from ground level to a vehicle.

Further, it is noted that the recitation of a rack "for attachment to a frame of an all terrain vehicle" is merely intended use and is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, Ellis' rack could be attached to an all terrain vehicle as Ellis discloses attachment means 28. Assuming Applicant revised claim 1 to recite an ATV deer-carrier rack, the body of claim 1 should also include positively recited structure directed to an ATV.

With respect to claim 5, 10 & 15, Ellis discloses a wing piece 62.

With respect to claims 6, 11 & 16, Ellis discloses rotating a support frame past vertical.

With respect to claims 7, 12 & 17, Ellis discloses a unitary member.

With respect to claims 8, 13 & 18, Ellis discloses a strap 78.

### ***Response to Arguments***

Applicant's arguments with respect to claims 4-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th., 8:00-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GWA



EILEEN D. LILLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600